

# Exhibit 46

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
3

4 CARYN DEVINS STRICKLAND, : CIVIL NO.  
5 Plaintiff :  
6 vs. :  
7 UNITED STATES, et al.,  
8 Defendants :  
9 \_\_\_\_\_

10 DEPONENT: EDWARD G. SMITH, ESQ.  
11 DATE: APRIL 20, 2023  
12 TIME: 10:00 a.m.  
13 LOCATION: CLARK BOLEN

14 671 JAMESTOWN DRIVE, SUITE 206D  
15 MURRELLS INLET, SC

16 REPORTED BY: CAROL T. LUCIC, RPR, RMR

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22 CLARK BOLEN COURT REPORTING & VIDEO CONFERENCING

23 CHARLESTON, SC 29405

24 843-762-6294

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1 the EDR coordinator under the EDR plan?

2 A. My understanding was point of contact, to  
3 advise of rights, potential avenues, be it  
4 counseling, mediation, but I mean I have a very  
5 limited understanding. EDRs were still fairly new  
6 to me in 2019.

7 Q. Who was the EDR coordinator in this case?

8 A. James Ishida, I believe.

9 Q. I believe you said that it was important  
10 for the EDR coordinator to provide information  
11 about the employee's rights under the EDR plan?

12 MS. WESTMORELAND: Objection;  
13 mischaracterizes his testimony.

14 A. Well, that was my understanding of what he  
15 was supposed to do or required to do.

16 Q. Did Caryn seem to have that information  
17 about her rights under the plan?

18 A. I thought she did, and to the extent she  
19 didn't I believe I would have told her we're going  
20 to try to resolve this. If not, you will go to a  
21 hearing in front of a judge. You will file a  
22 formal complaint. I don't know who the judge will  
23 be. Chief Judge Gregory might do it or might  
24 appoint somebody. I tried to explain to her what  
25 the steps were if we failed.

1 favorite of his or he was a fan of hers or  
2 something to that extent.

3 So to me she almost knew more than I did  
4 when it came to that because, again, all I've ever  
5 done in mediation is impasse or said, hey, we  
6 settled it. I don't know what occurs after that.  
7 It's not in my job.

8 Q. You said that you felt the remedies  
9 available didn't fit.

10 Did you tell Caryn that the lack of  
11 remedies that fit was an issue in her case?

12 A. I can't recall saying those words.

13 Q. Did you think it was an issue?

14 A. I didn't think it was an issue. I read  
15 the plan. Caryn told me in the initial meeting she  
16 wanted to be a federal defender, so I started  
17 working towards how can I get her back in the  
18 office so she can continue on to achieve her goal  
19 of being a federal defender.

20 I asked her, and she gave me three or four  
21 bullet points to take to Tony. I believe she  
22 thought Tony would not respond favorably. I went  
23 and met with Tony. He responded favorably. I came  
24 back. The Asheville office was one. Yes, we can  
25 do the Asheville office. Telecommuting can't be

1       A. I think if there is an alleged offending  
2 party that's the head, and they're going to -- I  
3 think they have to be a party to try to resolve it  
4 and work it out because, look, most of these  
5 employee disputes that I have been involved in --  
6 and I haven't been involved in that many --  
7 something has gone wrong. There has been some  
8 miscommunication, and it's put back together and  
9 people go back to work. That's the standpoint I  
10 bring to it, and it's what I brought to this one.

11       Q. The judge example that you heard about,  
12 was that in your circuit?

13       A. I've told you all I know about it. It was  
14 a passing comment, and I don't even remember where  
15 I heard it.

16       Q. So you don't know what circuit it was in?

17       A. No, ma'am.

18       Q. Or what judge?

19       A. No. We're not privy to judicial  
20 complaints.

21       Q. Are you aware of a unit executive ever  
22 being disqualified from an EDR mediation?

23       A. I can't recall one.

24       Q. Did you tell Caryn that Tony could be  
25 disqualified if she filed a formal complaint?

1       Gregory, he would not have appointed Tony.

2           Q.     Did the plan say that he could have  
3       appointed Tony?

4           A.     I don't think so.

5           Q.     Did you tell Caryn that you had no idea  
6       what Chief Judge Gregory would do about appointing  
7       a hearing officer?

8           A.     Probably because I don't.

9           Q.     So you didn't tell her that Tony would not  
10      be the hearing officer?

11          A.     She was a lawyer. I assumed she  
12      understood Tony would not be the hearing officer  
13      trying himself.

14          Q.     And you believe that the plan would not  
15      have allowed that?

16          A.     I don't believe the chief judge, who would  
17      be enforcing the plan, would ever allow that.

18          Q.     But to your knowledge the chief judge  
19      didn't grant the disqualification request?

20          A.     That was for the mediation. Tony had no  
21      power in the mediation, nothing. To be honest,  
22      Caryn had all the power in the mediation to say  
23      this is the way I'll come back to work, and if you  
24      won't do it, I'm taking it to a judge, and the  
25      judge can decide this.

1 Q. -- and we looked at it some today.

2 A. Yes.

3 Q. You said Caryn told you about the ways  
4 that she had tried to resolve her complaint with  
5 Tony.

6 A. I'm sure she went over a lot of it, if not  
7 all of it. I just don't recall.

8 Q. When she had been trying to resolve those  
9 concerns before coming to mediation, no one had any  
10 power to make Tony do anything; is that right?

11 A. Nobody else knew about it, so no.

12 Q. But she had just been asking it?

13 A. Yes. The only people that knew my  
14 understanding was was Tony and Caryn, so nobody had  
15 power to tell Tony to do anything about it.

16 Q. When she was in mediation, you just said  
17 no one could make Tony do anything either.

18 A. I don't have any power. I tried to  
19 motivate him to do something to make Caryn happy.  
20 He appeared to be motivated, so I was hopeful that  
21 I could get an agreement.

22 Q. How did he seem to be motivated to you?

23 A. "I don't want to lose her. I want to make  
24 this right." I think I read something in the  
25 transcript where I told Caryn that he said, "I want